



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the Landlords Application for Dispute Resolution dated September 25, 2015 (the “Application”). The Landlord seeks a monetary order for unpaid rent and the cost of the filing fee for the Application.

The Landlord and Tenant appeared at the hearing. The co-landlord, J.T., and co-tenant, J.M., were also present. The hearing process was explained. All parties provided affirmed testimony and were given the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The Landlord’s documentary evidence confirms the Tenant received the Notice of a Dispute Resolution Hearing (the “Notice”) by registered mail on September 30, 2015. I find the Tenants were duly served with the Notice on that date.

The Landlord and Tenant further confirmed they each received the other party’s evidence package.

I have considered all oral and documentary evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the Landlord entitled to the monetary relief being sought?

Background and Evidence

The Landlord’s documentary evidence included a six-page Residential Tenancy Agreement, signed by the parties on April 17, 2015 (the “Agreement”). The Agreement,

and the oral testimony of the parties, confirms a month-to-month tenancy which commenced on May 1, 2015. Rent in the amount of \$1,300.00 per month was payable on the first of each month.

The Landlord claims the Tenant did not provide notice to end the tenancy in accordance with section 45 and 52 of the Act. The Landlord says she is owed rent for the month of August 2015, which was not paid by the Tenant. The Landlord also seeks to be reimbursed for the \$50.00 application fee.

The Landlord testified that on June 25, 2015, she contacted the Tenant via email to inquire about her long-term plans. The Landlord had been contacted by a potential tenant who was interested in renting the unit from September 1, 2015.

The Tenant was open to discussing her plans. In an email to the Landlord on June 30, 2015, at 5:57 p.m. (the "June 30 email"), the Tenant stated:

"Ok cool, I guess the question is then if we were to move out for August 1, would you look for someone to take it for the month? If I do get get Nanaimo job, [J.M.] would still move out for August 1 but I would need place for August. I wonder if you'd be open to just me staying rather than have the place empty/me moving 3 times in 4 months....the issue would be I couldn't make the full rent on my own.

I guess it comes down to: tell the people it's theirs for sept 1, and we'll move out August 1, and maybe we can work something out for August (if I get this job, which we won't know for a while). How does that sound to you?"

[Reproduced as written.]

The Landlord responded to the June 30 email and asked if J.M. would be moving out on August 1 "no matter what". The Tenant responded, "I believe so".

The Tenant argues the June 30 email was sufficient notice of her intention to end the tenancy effective August 1, 2015, and that rent should not be payable for the month of August.

It appears the adequacy of the Tenant's notice remained uncertain and, on July 3, 2015, the Tenant followed up with a further email to the Landlord to clarify any confusion. In it,

the Tenant advised it was her position that she gave notice to end the tenancy in the June 30 email.

In her evidence, the Landlord confirmed she re-rented the rental unit effective September 1, 2015.

Analysis

Section 52 of the Act states that, in order to be effective, a notice to end tenancy given by a tenant must be in writing; be signed and dated; give the address for the rental unit; and state the effective date of the notice. The requirements of this provision are mandatory.

Based on the oral testimony and documentary evidence provided, and on a balance of probabilities, I find the June 30 email does not comply with the provisions of section 52 of the Act.

I have further concluded that, as of July 3, 2015, there remained some uncertainty about the status of the tenancy. This uncertainty prompted the Tenant to send the clarifying email referred to above.

The Tenant submitted that the Landlord had a duty to minimize her losses and rent the unit before September 1, 2015. She says the Landlord did little to advertise or otherwise find a suitable replacement in August.

Section 7 of the Act states that “[a] landlord or tenant who claims compensation for damage or loss...must do whatever is reasonable to minimize the damage or loss.” The Act, supported by Policy Guideline #5, confirms the test is reasonableness. The Landlord had a tenant who was prepared to rent the unit as of September 1, 2015. In the face of a potentially ineffective notice to end tenancy, I find it would have been unreasonable to expect the Landlord to turn that tenant away in hopes of securing a tenancy in August 2015.

Under section 26 of the Act, a tenant must not withhold rent, even if the landlord is in breach of the tenancy agreement or the Act, unless the tenant has some authority under the Act to not pay rent. In this situation the Tenants, having failed to give adequate notice to the Landlords, had no authority under the Act to withhold rent for the month of August 2015.

Accordingly, I find that the Landlord has established a total monetary claim of \$1,350.00, comprised of \$1,300.00 for August 2015 rent and the \$50.00 fee paid by the Landlord for this application.

This Order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$1,350.00.

This decision is final and binding on the parties, except as otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 14, 2016

Residential Tenancy Branch